

# ECONOMIC DEVELOPMENT AUTHORITY[261]

## Adopted and Filed Emergency

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 52, the Economic Development Authority hereby rescinds Chapter 400, “Generation Iowa Commission,” and adopts new Chapter 400, “Rules Applicable to Part XII,” and adopts new Chapter 401, “Administration of Financial Assistance,” and Chapter 402, “Energy Efficiency Community Grant Program,” Iowa Administrative Code.

The amendments implement changes to the Iowa Code provisions that established the Office of Energy Independence (the “office”) and the Iowa Power Fund (the “fund”). The Legislature, in 2011 Iowa Acts, House File 590, repealed Iowa Code chapter 469, including the office and the fund, and transferred the administration of certain energy development programs in Iowa Code chapter 473 from the office to the Authority.

The amendments also implement 2011 Iowa Acts, House File 45, section 13, which repealed the Generation Iowa Commission.

The Authority finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary because 2011 Iowa Acts, House File 590, section 52, requires that these rules be adopted and implemented on an “emergency” basis.

The Authority further finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing because 2011 Iowa Acts, House File 590, section 52, directs the Authority to adopt rules relative to 2011 Iowa Acts, House File 590, by emergency rule making and directs that the rules should be made effective upon filing.

These amendments are published herein under Notice of Intended Action as **ARC 9852B** to allow for public comment.

The Economic Development Authority adopted these amendments on October 20, 2011.

After analysis and review of this rule making, no negative impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 473, 2011 Iowa Acts, House File 590, division III, and 2011 Iowa Acts, House File 45, section 13.

These amendments became effective October 26, 2011.

The following amendments are adopted.

ITEM 1. Rescind 261—Chapter 400 and adopt the following **new** chapter in lieu thereof:

### CHAPTER 400

### RULES APPLICABLE TO PART XII

**261—400.1(84GA, HF590) Definitions.** For purposes of this part, unless the context otherwise requires:

“*Authority*” means the economic development authority created in Iowa Code chapter 15.

“*Board*” means the economic development authority board.

“*Director*” means the director of the economic development authority.

“*Entity*” or “*entities*” includes but is not limited to businesses, nonprofit organizations, educational institutions, units of state and local government, and individuals conducting business, research, or programs in Iowa.

“*Foreign*” means a locality outside of, or nation other than, the United States, Canada, or Mexico.

“*Fund*” means the moneys appropriated in prior fiscal years for purposes of the Iowa power fund created in 2011 Iowa Code section 469.9 and any repayments, recaptures, royalties, or other moneys accruing to the authority as a result of such appropriations.

**261—400.2(84GA, HF590) Purpose, administrative information, and implementation.**

**400.2(1) Purpose.** In 2011 Iowa Acts, House File 590, the general assembly repealed Iowa Code chapter 469 which established the Iowa power fund, allowed for the provision of financial assistance from the fund to certain energy projects, and provided for the fund’s administration by the office of

energy independence. With the repeal of Iowa Code chapter 469, the general assembly transferred to the authority the administration of all outstanding projects funded under the Iowa power fund and the contracts entered into thereunder. The purpose of this part is to allow the authority to administer and wind down the contracts entered into under the power fund legislation before its repeal.

**400.2(2) *Administrative information.*** The projects and contracts formerly administered by the office of energy independence are now administered by the authority. The public may obtain information about the Iowa power fund, the office of energy independence, or the office's projects by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3000.

**400.2(3) *Implementation.*** This part is intended to implement 2011 Iowa Code chapter 469 and 2011 Iowa Acts, House File 590, division III.

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

ITEM 2. Adopt the following new 261—Chapter 401:

#### CHAPTER 401

#### ADMINISTRATION OF FINANCIAL ASSISTANCE

##### **261—401.1(84GA,HF590) Purpose.**

**401.1(1)** Assistance was awarded under the Iowa power fund for purposes of the following:

- a.* Increasing the research, development, production, and use of biofuels and other sources of renewable energy;
- b.* Improving energy efficiency;
- c.* Reducing greenhouse gas emissions; and
- d.* Furthering the research, development, commercialization and distribution of technologies and practices to sustain the environment and develop business in this state.

**401.1(2)** Each individual project receiving a grant or loan need not meet all of these purposes, but the financial assistance provided, when considered on the whole, shall be consistent with these purposes.

**261—401.2(84GA,HF590) Appropriations.** The fund includes appropriations made to the fund by the general assembly, other moneys available to or obtained or accepted from federal or private sources, interest earned, and repayments and recaptures of loans and grants.

**261—401.3(84GA,HF590) Control of fund assets.** The fund is under the control of the authority. The director shall coordinate the administration of the fund. The board shall approve, defer, or deny applications for financial assistance from moneys appropriated to the fund. The board may amend or wind down contracts entered into for the provision of financial assistance under the fund.

##### **261—401.4(84GA,HF590) Allocation of fund moneys.**

**401.4(1)** Moneys available in the fund may be used to provide financial assistance to entities conducting business, research, or programs in Iowa:

- a.* To accelerate research and development, knowledge transfer, and technology innovation and improve the economic competitiveness of efforts furthering the goals of the fund stated in rule 261—401.1(84GA,HF590).
- b.* To increase the demand for and educate the public about technologies and approaches furthering the goals of the fund stated in rule 261—401.1(84GA,HF590).

**401.4(2)** Appropriations are subject to actual receipt of moneys by the fund.

**401.4(3)** Repayments and recaptures of fund moneys may be allocated by the board for purposes of financial assistance under this part or for the administrative costs of the authority.

**261—401.5(84GA,HF590) Eligible applicants.** Entities conducting or proposing or partnering to conduct business, research, or programs in Iowa are eligible to apply to the authority for financial

assistance from the fund. Proposals must demonstrate potential for significant impact in Iowa. A single entity or group of entities may submit an application for assistance from the fund.

**261—401.6(84GA,HF590) Eligibility criteria for financial assistance.**

**401.6(1) *General criteria.*** Applicants must include documentation relating to the actual or potential development of the following:

- a.* Utilization of crops and products grown or produced in this state that maximize the value of crops used as feedstock in biomanufacturing products and as coproducts.
- b.* Reduction of greenhouse gas emissions and carbon sequestration.
- c.* Commercialization of technology and product development for sale in the national and international market.
- d.* Alternative and renewable energy and increased energy efficiency.
- e.* Private or federal matching funds.

**401.6(2) *Research criteria.*** In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for research must include information related to the following:

- a.* The technical feasibility of the proposal.
- b.* The extent to which the proposed research builds on already-existing research.
- c.* The extent to which the proposed research meets a market need and demonstrates viability for commercialization.

**401.6(3) *Commercialization criteria.*** In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for commercialization projects must include information related to the following:

- a.* The extent to which the technology has been proven.
- b.* The technology sought to be commercialized.
- c.* The current scale-up status of the project.

**401.6(4) *Education criteria.*** In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for educational projects must include information related to the following:

- a.* The target audience, including the estimated number of people targeted.
- b.* An estimate of the energy savings possible or fossil fuel reductions achievable if the target audience implements the methods presented.

**401.6(5) *Undesignated projects criteria.*** In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for undesignated projects must include information that explains how the project meets the statutory goals of the fund.

**261—401.7(84GA,HF590) Forms of assistance.**

**401.7(1) *Types of assistance.*** Financial assistance from the fund may consist of, but is not limited to, loans, forgivable loans, grants, investments, loan guarantees, and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

**401.7(2) *Eligible uses of funds.*** The eligible uses of the funds awarded by the board may be limited at the board's discretion. Generally, funds awarded by the board may not be used to fund the purchase of land or buildings, and no more than 10 percent of the funds awarded per application may be used for indirect costs.

**261—401.8(84GA,HF590) Application process.**

**401.8(1) *Preapplication.*** To apply for moneys from the fund, an applicant shall submit a preapplication to the authority in a form provided by the authority on behalf of the board. The preapplication serves as an executive summary of the applicant's proposal. The authority shall review preapplications and request full applications for those projects that appear to meet the eligibility criteria and statutory goals of the fund.

**401.8(2) Full application.** An applicant requested to submit a full application shall submit such application to the authority in a form provided by the authority on behalf of the board. The authority shall review the full applications and any technical, scientific or financial review completed and make recommendations to the board. The board shall review the applications and make the final decision. The board shall have final authority to approve, defer, or deny such applications. The board or the authority may request additional information at any time and proceed with consideration of the application when that information is received.

**401.8(3) Technical, scientific or financial review.** The board or the authority may request an applicant to obtain a technical, scientific or financial review of a proposal which may wholly or partially be funded at the applicant's expense. The review may be obtained from a reviewer recommended by the board or the authority or may be obtained from a reviewer selected by the applicant and approved in advance by the board or the authority. Only reviews from reviewers recommended by or approved by the board or the authority will be accepted.

**401.8(4) Agency review.** The authority may refer proposals to other state agencies for review as appropriate.

**401.8(5) Ongoing acceptance of applications.** Applications shall be accepted by the authority on behalf of the board on an ongoing basis. Review times will vary due to the complexity and diversity of applications.

**401.8(6) Forms and directions.** Application forms and directions for completing the forms are available from the authority.

## **261—401.9(84GA, HF590) Confidentiality.**

**401.9(1) Period of confidentiality.** All information contained in an application for financial assistance submitted to the board shall remain confidential while the board is reviewing the application, processing requests for confidentiality, negotiating with the applicant, and preparing the application for consideration by the board.

**401.9(2) Release of information for technical review.** The board may release certain information in an application for financial assistance to a third party for technical review. If the board releases such information, the board shall ensure that the third party protects such information from public disclosure.

**401.9(3) Applicant request for confidentiality.** An applicant may make a written request to the board to keep confidential certain details of an application, contract, or the material submitted in support of an application or a contract. If the request includes a sufficient explanation as to why the public disclosure of such details would give an unfair advantage to competitors, the board shall keep such details confidential.

**401.9(4) Criteria for determining confidential treatment.** In determining whether to grant a request for confidential treatment of applicant information, the board must appropriately balance an applicant's need for confidentiality against the public's right to information about the board's activities. The board may consider the following:

- a. The nature and extent of competition in the applicant's industry sector.
- b. The likelihood of adverse financial impact to the applicant if the information were to be released.
- c. The risk that the applicant would locate in another state if the request is denied.
- d. Any other factors the board may reasonably consider relevant.

**401.9(5) Confidentiality decision.** The board shall notify an applicant in writing of its decision regarding the confidentiality of an application, contract, or supporting materials. Once the board has notified the applicant of its decision, any information not deemed confidential by the board shall be made publicly available. Any information deemed confidential by the board shall be kept confidential by the authority and the board during and following the administration of a contract executed pursuant to a successful application.

**401.9(6) Withdrawal of application.** If the board denies an applicant's request for confidentiality, the applicant may withdraw an application and any supporting materials. The board shall not retain any copies of the application and supporting materials. Upon notice that an application has been withdrawn, the board shall not release a copy in response to a request for records pursuant to Iowa Code chapter 22.

**261—401.10(84GA,HF590) Contents of full application.** A full application to request assistance from the fund shall include, but not be limited to, the following:

**401.10(1)** Documentation that the applicant meets the eligibility criteria stated in rules 261—401.5(84GA,HF590) and 261—401.6(84GA,HF590).

**401.10(2)** A description that explains how the applicant's project will promote one or more of the goals of the fund as set forth in rule 261—401.1(84GA,HF590).

**401.10(3)** A description of the proposed project, including all sources and uses of funding, the amount and type of funding requested, and an identification of the community or location for the project.

**401.10(4)** Information regarding benefits to the state of Iowa from the proposed project in terms of the state's return on investment in the project. A recipient of power fund moneys shall provide to the board on a periodic basis as determined by the board a report on the use and effectiveness of the moneys granted or loaned.

**401.10(5)** A business plan, schedule of work, or equivalent that describes the applicant's current operations and future plans.

**401.10(6)** If applicable, a description of the applicant's violations of law in the preceding five years including, but not limited to, worker safety statutes, rules, and regulations. The description must include violations of any federal or state environmental protection statute, regulation, or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the applicant shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the authority, the applicant shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and other information that would assist the authority or the board in understanding the nature of the violation.

**401.10(7)** A certification by the applicant that the information provided in the application is true and accurate to the best of the applicant's knowledge.

**401.10(8)** A release of information to permit the authority and the board, and their respective attorneys and agents, to reasonably evaluate the application.

**401.10(9)** Financial information to the extent requested by the board, including, if applicable, information about the applicant's owners, investors, and business structure.

**261—401.11(84GA,HF590) Selection criteria.** The board shall seek to maintain flexibility when making decisions to allocate moneys from the fund to specific proposals. In reviewing applications for financial assistance, the board shall consider the extent to which the proposal is consistent with the energy independence plan as developed in accordance with 2011 Iowa Code section 469.4 and consistent with the statutory purposes of the fund as described in subrule 401.1(1). In addition, the board shall consider the following:

**401.11(1) *Proposal categories.***

*a.* The board may allocate moneys from the fund annually to projects in any or all of the following categories:

- (1) Commercialization.
- (2) Research.
- (3) Education.
- (4) Undesignated.

*b.* The allocation of moneys by the board to proposals in these categories is discretionary and depends on factors including, but not limited to, the quality and quantity of the applications submitted.

**401.11(2) *Financial assistance.***

*a.* The board will consider whether the applicant has available financial resources in addition to the fund to support the proposal financially. In assessing available financial resources, the board may:

- (1) Consider both private and public funds as available financial resources.
- (2) Recognize the contribution of in-kind resources.
- (3) Require a match of available financial resources for commercialization proposals.
- (4) Give weight to available financial resources for research, education, or other undesignated proposals.

b. The significance of the availability of financial resources may be weighed by the board in its discretion when allocating moneys from the fund for specific proposals.

**261—401.12(84GA, HF590) Contract administration.**

**401.12(1) Notice of award.** Applicants will be notified in writing of the board's decision, including any conditions and terms of approval.

**401.12(2) Contract required.** The board shall direct the authority to prepare an agreement which includes, but is not limited to, a description of the project to be completed by the recipient; length of the project period; conditions to disbursement as approved by the board; a requirement for a report, to be made to the board on a periodic basis determined by the board, on the use and effectiveness of financial assistance from the fund; and the reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis. Successful applicants shall execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to revoke the award. The 120-day time limit may be extended by the board for good cause shown. No award is final until an agreement is signed by all parties.

**401.12(3) Contract amendments.** Any substantive change to a funded project will require a contract amendment. Such an amendment may be approved by the board or, if allowed by subrule 401.12(4), the amendment may be approved by the authority. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

**401.12(4) Situations not requiring board approval.** The authority may take final action on budget revision amendments that would not substantially change the terms or conditions of the award or contract, on the discontinuance or suspension of collection efforts, and on negotiated settlements for projects that do not meet contract requirements. The authority may decide to take final action or to refer the matter to the full board for action.

**401.12(5) Intellectual property.** The director shall promote statewide utilization of the results of research, development, and commercialization activities funded in whole or in part by the fund. The director is authorized to negotiate provisions with applicants that address issues relating to income generated from patents, trademarks, licenses, or royalties expected to be produced as a result of moneys proposed to be expended from the fund. The director may seek assistance from appropriate state agencies and may seek outside expertise. An applicant shall not be prevented from protecting any previously developed intellectual property.

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

ITEM 3. Adopt the following new 261—Chapter 402:

CHAPTER 402  
ENERGY EFFICIENCY COMMUNITY GRANT PROGRAM

**261—402.1(84GA, HF590) Purpose.** The purpose of the energy efficiency community grant program is to make funding available to local communities for energy efficiency projects or programs. The program is established with moneys from the fund, which is under the administration of the authority.

**261—402.2(84GA, HF590) Definitions.** For purposes of this chapter, unless the context otherwise requires:

"*Eligible applicant*" means a city, county, nonprofit organization, organization involved with energy efficiency or conservation efforts, environmental organization, or group that has a tax identification number.

"*Eligible project*" means any project or program that would save energy dollars or energy units.

"*In kind*" means any matching funds in the form of salaries and materials. Equipment and indirect costs will not be counted as in-kind matching funds. Volunteer hours that are submitted for salary

match must use an hourly rate equivalent to the average national hourly earnings of all production and nonsupervisory workers on private, nonfarm payrolls as determined by the U.S. Bureau of Labor Statistics.

**261—402.3(84GA,HF590) Requests for applications.** The authority shall determine the form of the application and manage requests for applications as necessary.

**261—402.4(84GA,HF590) Geographic distribution.** Consideration will be given to applications based on distribution throughout Iowa's congressional districts. The authority may consider multiple applications from the same community. The authority may take into account geographic distribution in determining awards.

**261—402.5(84GA,HF590) Criteria for review.** In reviewing applications, the authority shall consider the following.

**402.5(1) *Promotion of energy efficiency or renewable generation.*** The authority shall consider the project's potential promotion of residential or small-scale renewable energy systems and the project's ability to reduce energy consumption, energy units, or dollars spent on energy.

**402.5(2) *Collaboration.*** The authority shall consider the following:

- a.* Whether the project establishes or supports a community-based, county-based or regional energy efficiency project or program.
- b.* The breadth and depth of community, county or regional involvement in the energy efficiency project or program.
- c.* The involvement of local schools, civic organizations, chambers of commerce, and private groups.
- d.* The project's support of any existing or proposed ordinances encouraging energy efficiency and conservation or energy efficient building code provisions and enforcement.
- e.* The project's efforts to secure local funding for the community-based, county-based or regional energy efficiency project or program or for a funding sustainability plan.

**261—402.6(84GA,HF590) Project approval and award of funds.** Projects shall be approved by the director after review and recommendation by authority personnel. All funding decisions shall be reported monthly to the board. Funds will be distributed to approved projects based on mutually agreed-upon contract terms.

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

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